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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

No. 318052 and No. 318095

KEVIN PORTER,

Appellant,

v.

NATHANIEL (NATE) BOISSO, PERSONAL REPRESENTATIVE
OF THE ESTATE OF CHARLES BOISSO,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

This case presents an issue of first impression regarding the statute of limitations for filing suit on a rejected creditor's claim under RCW 11.40.100(1). The statute plainly states: "If the personal representative rejects a claim, . . . the claimant must bring suit against the personal representative *within thirty days . . . in the proper court . . .* or the claim will be forever barred." (Emphasis added.) The specific issue presented is this: Does filing suit in an "improper court" within 30 days toll the mandatory deadline for bringing suit in "the proper court" under RCW 11.40.100(1)? Appellant ("Porter") argues it does; respondent ("Boisso") argues it does not.

The material facts are not in dispute, and the language of the controlling statutes is unambiguous. The issue presented can therefore be decided, without the need for oral argument, by simply applying the law to the facts. Doing so should lead to the following conclusion: Porter's failure to bring suit on his rejected Creditor's Claim in "the proper court" (the Kittitas County Superior Court) within 30 days forever bars the claim.

Chapters 11.40 (claims against decedents' estates) and 11.96A RCW (the Trust and Estate Dispute Resolution Act, or "TEDRA") were intended by the Legislature to supplement each other. *See* RCW 11.96A.080(2). Under RCW 11.40.100(1), the Legislature made clear that, unless suit on a rejected creditor's claim is brought "in the proper court" within 30 days, "the claim

will be forever barred." Determining "the proper court" requires reference to TEDRA's special venue statute, RCW 11.96A.050. Subsection (5) clearly states: "Once letters testamentary or of administration have been granted in the state of Washington, *all . . . other proceedings* under this title [Title 11 RCW] *shall* be had or made *in the county in which such letters have been granted . . .*" (Emphasis added.)

Letters of administration were granted by the Kittitas County Superior Court *before* Porter submitted his rejected Creditor's Claim. RCW 11.40.100(1) and RCW 11.96A.050(5) thus make clear that Porter was required to timely file suit on his rejected claim in the Kittitas County Superior Court; otherwise, his claim is forever barred. The unambiguous, bright-line mandates of RCW 11.40.100(1) and RCW 11.96A.050(5) evince the intent of the Legislature that the 30-day deadline for filing suit "in the proper court" requires strict compliance; therefore, filing suit in an improper court within the deadline does not toll the 30-day statute of limitations.

Accordingly, Boisso asks this Court to affirm the trial court's judgment dismissing, as time-barred, all claims asserted in Porter's Creditor's Claim against the decedent (Court of Appeals Case No. 318095), and the trial court's judgment dismissing Porter's complaint on his rejected Creditor's Claim (Court of Appeals Case No. 318052). Boisso also requests an award of attorney's fees on appeal.

II. STATEMENT OF THE CASE

A. Preliminary Statement.

Porter's rejected Creditor's Claim, and his subsequent Complaint filed thereon, arise from his assertion that he is entitled to specific performance of an executory real estate contract, once he pays off the balance of the purchase price. Even if this Court were to reverse the lower court's judgments, Porter's claim could not survive on the merits. Porter was occupying the decedent's premises as a tenant, pursuant to a 1999 rental agreement, which stated: "[Porter] has first right of refusal, to be exercised in 30 days of written notice, when I decide to sell."¹ The alleged contract relied upon by Porter is a letter dated July 17, 2001.² The letter simply sets forth the decedent's proposed offer to sell the property to Porter.³ The terms of the offer, however, were never accepted.

Indeed, as of September 18, 2012, the month before the decedent's death, there was still no "meeting of the minds" on the essential terms of the alleged agreement.⁴ It is axiomatic that, without a "meeting of the minds" on all material terms, there can be no enforceable contract. *Sea-Van Investments*

¹ A copy of the alleged Agreement is found at CP 37 in Appeal No. 318095.

² See Porter's Pierce County complaint (CP 22 at Ex. C in Appeal No. 318095).

³ *Id.*

⁴ See Boisso declaration, CP 251 at ¶2 (Appeal No. 318095) and Ex. A thereto at CP 254-57 (letters exchanged between the decedent and Porter).

v. Hamilton, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994).

Porter's alleged contract also violates the statute of frauds, RCW 64.04.020, and is simply an attempt to perpetuate a fraud on the decedent's estate. As this Court has made clear: "The underlying purpose of the statute of frauds is to prevent fraud, not be a means of perpetuating one." *Western Farm Service, Inc. v. Olsen*, 114 Wn. App. 508, 516, 59 P.3d 93 (2002).

B. The Uncontroverted Facts Relevant to This Appeal.

Porter admits the following facts: (1) his claims against the decedent arise from an alleged contract to purchase the decedent's real property located in Pierce County, Washington⁵; (2) the decedent was a resident of Kittitas County at the time of his death, and the probate of his estate was commenced in the Kittitas County Superior Court in **November 2012**;⁶ and (3) at the time of the decedent's death, Porter still owed a balance of \$3,100 on the alleged contract purchase price.⁷

On **November 13, 2012**, letters of administration were granted by the Kittitas County Superior Court.⁸ On **December 17, 2012**, pursuant to RCW 11.40.070, Porter filed a Creditor's Claim in the Kittitas County probate ac-

⁵ See Appellant's br. at 2.

⁶ *Id.* at 9; see also, CP 25 (Appeal No. 318052).

⁷ See Appellant's br. at 10.

⁸ CP 25 (Appeal No. 318052) (Kittitas County Superior Court Docket Sheet, Case No. 12-4-00086-7 at Sub. No. 6).

tion, asserting: "Upon payment of principal balance due [\$3,100], the estate [is requested to] execute a deed in and to the property [in Pierce County] conveying the property to the Claimant."⁹ Porter's Creditor's Claim further stated the amount of his claim against the decedent was "\$116,900".¹⁰

On **December 31, 2012**, Boisso's counsel rejected Porter's Creditor's Claim, and provided the following written warning: "Pursuant to RCW 11.40.100, you must bring suit *in the proper Court* against the Personal Representative within thirty days . . . *otherwise your claim will be forever barred.*"¹¹ (Emphasis added.)

On **January 29, 2013**, Porter filed suit against Boisso in the *Pierce County Superior Court* on his rejected Creditor's Claim.¹² Porter's rejected Creditor's Claim in the Kittitas County Superior Court probate action and his Pierce County Complaint are virtually mirror images of each other.¹³

On **March 22, 2013**, oral argument was heard on Boisso's motion to dismiss Porter's Pierce County action, which was based on two primary grounds: first, because Porter's Complaint on his rejected Creditor's Claim

⁹ See Porter's Creditor's Claim (CP 1-2 in Appeal No. 318095), a copy of which is attached at Appendix 1 hereto.

¹⁰ *Id.*

¹¹ The Notice of Rejection of Creditor's Claim (CP 5 in Appeal No. 318095) is attached at Appendix 2 hereto.

¹² A copy of the Pierce County Complaint (CP 22-35 in Appeal No. 318095) is attached at Appendix 3 hereto.

¹³ See Creditor's Claim (Appendix 1) and the Pierce County Complaint (Appendix 3).

was a "matter" governed by TEDRA, the only proper venue for bringing suit was Kittitas County; second, under the "priority of action rule", the Kittitas County Superior Court already had jurisdiction over the cause; therefore, as the second-filed action, the Pierce County Superior Court was required to concede jurisdiction to that court.¹⁴ Pierce County Superior Court Judge Tollefson agreed, and on **April 12, 2013**, he stayed all further proceedings, and ordered Porter to litigate his claims in the Kittitas County action.¹⁵

Later on **April 12, 2013**, Boisso filed a TEDRA petition in the Kittitas County Superior Court, seeking to bar all of Porter's claims under RCW 11.40.100(1) and RCW 11.96A.050(5), because Porter failed to bring suit on his rejected Creditor's Claim in the "proper court" (the Kittitas County Superior Court) within the mandatory 30-day deadline.¹⁶

Instead of answering the TEDRA petition, Porter filed a motion to transfer *venue and jurisdiction* of his stayed Pierce County action to Kittitas County.¹⁷ In granting the motion, on **May 3, 2013**, Judge Tollefson made the following findings *in an order prepared by Porter's counsel*: "Pursuant to [the] Court's Order Staying All Further Proceedings dated April 12, 2013,

¹⁴ See CP 95-98 in Appeal No. 318095; see also, *id.* at 11.

¹⁵ Judge Tollefson's order (CP 62-63 in Appeal No. 318095) is attached at Appendix 4 hereto; see also, CP 95-98 in Appeal No. 318095.

¹⁶ See CP 6-40 in Appeal No. 318095.

¹⁷ See Judge Tollefson's order, CP 66 at ¶¶1.4-1.5 (Appeal No. 318095), attached at Appendix 5 hereto.

Plaintiff is required to litigate whatever issues and claims concerning the alleged contract in Kittitas County where the probate was started . . . This action is of a nature that requires change of venue and jurisdiction to the Kittitas County [sic], the County in which the probate of the Estate of Charles Boisso was filed."¹⁸ By his motion and proposed order to transfer jurisdiction and venue, Porter conceded that venue and jurisdiction were proper in Kittitas County, not in Pierce County.

The Pierce County Superior Court file was then transferred to the Kittitas County Superior Court, which resulted in two separate actions in the same court involving the same subject matter (Boisso's TEDRA petition filed April 12, 2013 (CP 6-21 in Appeal No. 318095) and the subsequently transferred Pierce County action (CP 22-35 in Appeal No. 318095)).

On **May 28, 2013**, the Kittitas County Superior Court granted Boisso's TEDRA petition, and entered an order and judgment dismissing Porter's claims as time-barred under RCW 11.40.100(1).¹⁹ On **July 3, 2013**, the Kittitas County Superior Court dismissed Porter's transferred Pierce County action on the grounds of res judicata and collateral estoppel.²⁰

¹⁸ See Appendix 5 hereto at ¶¶2.2-2.3.

¹⁹ See Order at CP 300-302 and Judgment at 318-21 (Appeal No. 318095), attached at Appendices 6 and 7 hereto.

²⁰ See Order at CP 28-29 and Judgment at CP 31-33 (Appeal No. 318052) attached at Appendices 8 and 9 hereto.

III. SUMMARY OF ARGUMENT

Porter's Creditor's Claim is governed by the Washington Probate Code, Title 11 RCW. This includes the procedures governing a creditor's claim under chapter 11.40 RCW and those for resolving disputed "matters" involving decedents' estates under chapter 11.96A RCW. RCW 11.40.100(1) and RCW 11.96A.050(5) require strict compliance. As such, Porter's failure to timely file suit on his rejected creditor's claim in the Kittitas County Superior Court forever barred his claim.

Porter's argument - that he was required under RCW 4.12.010 to file suit in Pierce County, and doing so tolled the 30-day deadline for filing suit in Kittitas County - is misplaced. Porter's Complaint for specific performance is not an action affecting title to real property. Accordingly, RCW 4.12.010 does not apply in this case. In short, Porter did not have the option of filing suit in Pierce County.

IV. ARGUMENT

A. TEDRA Controls the Resolution of Porter's Disputed Claims Against the Decedent's Estate.

By bringing his Creditor's Claim in the Kittitas County Superior Court pursuant to RCW 11.40.070, Porter admitted he was making a claim governed by TEDRA. TEDRA was enacted as a special proceeding for the resolution of *all matters* involving the assets of a decedent's estate, which would

include the real property in question here. RCW 11.96A.010 sets forth the Legislature's intent in enacting TEDRA:

The overall purpose of this chapter is to set forth generally applicable statutory provisions for *the resolution of disputes and other matters* involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of *matters*, such as mediation, arbitration, and agreement. This chapter also provides for judicial resolution of disputes if other methods are unsuccessful. (Emphasis added.)

RCW 11.96A.020(1) states the clear intent of the Legislature to grant extremely broad authority to the superior courts under TEDRA: "It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle: (a) *All matters*, concerning the estates and assets of . . . deceased persons . . ."

RCW 11.96A.030(3) broadly defines "*matter*" to include "any issue, question, or dispute involving . . . any non-probate asset, *or with respect to any other asset or property interest passing at death*". This "may include, without limitation, questions relating to (i) [t]he construction of wills, trusts, community property agreements, and other writings . . ."

RCW 11.96A.080(1) expressly allows "a judicial proceeding *for the declaration of rights* or legal relations *with respect to any matter*, as defined by RCW 11.96A.030". TEDRA thus grants "plenary powers to the trial court". *In re McKean*, 144 Wn. App. 333, 343, 183 P.3d 317 (2008). This

plenary power extends to the probate court under TEDRA. *Estate of Black*, 116 Wn. App. 492, 498, 66 P.3d 678 (2003).

Porter seeks specific performance compelling Boisso to honor his alleged contract to purchase the decedent's real property, which is now an asset of the decedent's estate. He also seeks a declaration of the parties' rights under the alleged contract. Alternatively, he seeks monetary damages against the Estate. Each of these issues involves a "*matter*" under TEDRA.

B. Porter's Failure to Timely File Suit in the Kittitas County Superior Court Forever Bars His Claim.

The issue here turns upon the interplay between RCW 11.40 and RCW 11.96A. The analysis must begin with the well-settled maxim of statutory construction: "Statutes relating to the same subject matter are to be considered together to ascertain legislative policy and intent." *Bennett v. Hardy*, 113 Wn.2d 912, 926, 784 P.2d 1258 (1990). This maxim applies with full force and effect to RCW 11.40 and RCW 11.96A. Both statutes are part of Title 11 RCW; and RCW 11.96A.080(2) clearly states: "The provisions of this chapter should not supersede, *but shall supplement*, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter . . . *11.40 . . .*" (Italics added.)

Chapter 11.40 RCW governs claims against a decedent's estate. RCW 11.40.010 plainly states: "A person having a claim against the dece-

dent may not maintain an action on the claim unless . . . the claimant has presented the claim as set forth in this chapter." RCW 11.40.070 governs the presentation of a claim against a decedent's estate, which Porter followed.²¹ RCW 11.40.100 governs the procedure once a creditor's claim has been rejected. Subsection (2) unambiguously states that suit against the personal representative must be brought "in the proper court" within 30 days "or the claim will be forever barred."

Because TEDRA, chapter 11.96A RCW, supplements chapter 11.40, determining "the proper court" for filing suit on a rejected creditor's claim requires reference to TEDRA's special venue statute, RCW 11.96A.050. Subsection (5) of the statute mandates that, "[o]nce letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted, unless venue is moved as provided in subsection (4) of this section."²²

Because letters of administration were granted by the Kittitas County

²¹ *Id.*

²² Subsection (4) does not apply in this case. It governs "[v]enue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, including [trust and guardianship proceedings]." If the decedent was a resident of this state at the time of death, subsection (4) requires a change of venue, except for good cause shown, to the county where the decedent resided at the time of death. Thus, subsection (4) would only apply here if the probate of the decedent's estate had been commenced in a county other than Kittitas County, where the decedent resided at the time of his death.

Superior Court before Porter submitted his rejected Creditor's Claim, he was required to bring suit in the Kittitas County Superior Court. He did not have the option of bringing suit in Pierce County, or anywhere else.

To hold otherwise would render meaningless or superfluous RCW 11.40.100's use of the words "in the proper court". In fact, it would require striking them from the statute altogether. This would, however, violate several cardinal rules of statutory construction. "In interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the legislature, as expressed in the act." *Burlington Northern v. Johnston*, 89 Wn.2d 321, 326, 572 P.2d 1085 (1977). "Related statutory provisions are interpreted in relation to each other and all provisions harmonized." *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708, 985 P.2d 262 (1999). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). "A statute that is clear on its face is not subject to judicial interpretation." *Clark v. Falling*, 92 Wn. App. 805, 810, 965 P.2d 644 (1998).

The unambiguous words - "the proper court" - clearly refer to a single court. Had the Legislature intended that suit on a rejected creditor's claim could be brought in any court, it would not have added the words, "in the proper court", to RCW 11.40.100(1). Instead of stating, "the claimant must

bring suit *in the proper court* against the personal representative within thirty days", the statute would simply state: "the claimant must bring suit against the personal representative within thirty days."

C. RCW 11.40.100(1) and RCW 11.96A.050(5) are Compulsory, Bright-Line Rules Requiring Strict Compliance; Therefore, the 30-Day Deadline for Bringing Suit in "the Proper Court" Cannot be Extended or Tolloed by Bringing Suit in Another Court Within the Deadline.

RCW 11.40.100(1) unequivocally states that suit on a rejected creditor's claim "*must*" be brought in the proper court within thirty days. RCW 11.96A.050(5) likewise states that, once letters of administration have been granted, all of the proceedings "*shall*" take place in the county where such letters were granted. The words "must" and "shall" create an imperative duty that cannot be circumvented.²³

"It is well settled that the word `shall' in a statute is presumptively imperative and operates to create a duty." *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993). "The word `shall' in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent." *Id.* No such contrary legislative intent appears in RCW 11.40.100 and RCW 11.96A.050. Instead, the plain language of the statutes

²³ Where a word is undefined, it will be given "its plain, dictionary definition". *Jametsky v. Olsen*, 179 Wn.2d 756, 766, 317 P.3d 1003 (2014). Like the word "shall", the word "must" is commonly defined as "an imperative duty". See *The Merriam-Webster Dictionary*, 11th Ed.

imposes a compulsory duty; and because their language is unambiguous, they evince a clear legislative intent that must be given effect. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

Porter's argument - that filing suit within 30 days in Pierce County tolled the statute of limitations - is without merit and contravenes the express legislative intent articulated in RCW 11.96A.010, RCW 11.96A.050(5), RCW 11.96A.080, and RCW 11.40.100(1). Moreover, RCW 11.96A.050(5) and RCW 11.40.100(1) create bright-line rules, and the failure to comply with them is fatal. *See, e.g., Wagg v. Estate of Dunham*, 107 Wn. App. 35, 26 P.3d 287 (2001); *Cloud v. Summers*, 98 Wn. App. 724, 991 P.2d 1169 (1999); *Ruth v. Dight*, 75 Wn.2d 660, 453 P.2d 631 (1969); *In re Estate of Wilson*, 8 Wn. App. 519, 507 P.2d 902 (1973), *review denied*, 82 Wn.2d 1010 (1973).

In *Wagg*, this Court interpreted former RCW 11.40.080, which stated: "No holder of any claim against the decedent shall maintain an action thereon, unless the claim shall have been first presented as provided in this chapter. Nothing in this chapter affects RCW 82.32.240." 107 Wn. App. at 39. The Court stated: "To read former RCW 11.40.080 in the manner suggested by Mr. Wagg - that delivery or service of the lawsuit provides notice to the personal representative of the claims - would, in the words of the superior court, 'render the statute meaningless.'" *Id.* at 40. "The language of former

RCW 11.40.080, as well as its interpretation by case law, *has produced a bright-line rule* that required Mr. Wagg to file a notice of claim with the estate prior to filing the lawsuit in Superior Court." *Id.* (emphasis added).

In *Cloud*, Division One upheld the estate's rejection as untimely a lawsuit filed in federal court within the 4-month time limitation under RCW 11.40.010. The statute provides that a creditor's claim is "forever barred" if the creditor fails to file a claim within four months after notice of the decedent's death. *Cloud*, 98 Wn. App. at 736, 738. The court stated:

Darrell's complaint against the Summer's Estate, which he filed in federal court within the 4-month time limitation, is not sufficient to satisfy the Washington Probate Notice to Creditor statute, RCW 11.40. ***This statute creates a bright line rule that required Darrell to file a notice of claim with the personal representatives. Substantial compliance is not sufficient.*** Darrell's failure to comply with this rule is fatal, notwithstanding the fact that the Summer's Estate was fully aware of the nature of the claim for other reasons, i.e., Darrell's federal lawsuit.

Id. at 738 (emphasis added).

In *Ruth*, the Washington Supreme Court stated:

As to the action against the deceased doctor's estate, however, it appears to be barred by the nonclaim statute relating to the filing of claims in decedent's estates. In contrast to the 3-year statute of limitations (RCW 4.16.080(2)), the language of the nonclaim statute (RCW 11.40.010), is more precise and definitive and less susceptible of interpretation. ***Either a claim against the estate is filed within 6 months of first publication of notice to creditors, or it is barred.*** Two ministerial acts, each precisely ascertainable in time, fix the time limits: The first publication of notice to creditors [RCW 11.40.010] and the filing of the creditor's claim [RCW 11.40.080].

RCW 11.40.080 states:

'No holder of any claim against the estate shall maintain an action thereon, unless the claim shall have been first presented as herein provided.'

The nonclaim statute is mandatory and cannot be subject to enlargement by interpretation; and it cannot be waived.

Id. at 668-69 (emphasis added).

In *Estate of Wilson*, Division One held: "Compliance with the statute [RCW 11.40.010] is mandatory. A debt which accrued during the lifetime of the decedent is barred and may not be paid unless a claim for its payment was filed within the 4-month period. . . . ***Equitable considerations may not mitigate the strict requirements of the statute*** where a timely claim has not been filed by the creditor. . . ." 8 Wn. App. at 525 (citations omitted) (emphasis added).

There is no logical reason why this Court should not apply the same bright-line rule, requiring strict compliance with RCW 11.40.100(1), especially since Division One recently did so in a similar situation. *See In re Estate of Stover v. Simmons*, 178 Wn. App. 550, 315 P.3d 579 (2013), where the court refused to apply CR 6(e) to RCW 11.40.100(1) to extend the 30-day deadline for filing suit on a rejected creditor's claim. After noting RCW 11.40.100(1)'s mandatory language is unambiguous, and "plainly states that a claimant like [respondent] `must bring suit against the personal representative

within 30 days after notification of rejection or the claim is forever barred" (*id.* at 558), the court concluded: "[Respondent's] suit is untimely because she petitioned the court to allow her claim 35 calendar days after notification of rejection." *Id.* at 559.

In finding the Legislature intended the word "day", as used in RCW 11.40.100(1), to include weekends, the court stated that not applying CR 6(e) to extend the 30-day deadline, "furthers the timely and efficient resolution of claims against the estate because the statute establishes a clear bright-line rule within which a claimant 'must' bring an action on a claim." *Id.* at 558-59.

The bright-line rules created by RCW 11.40.100(1) and RCW 11.96A.050(5) should apply here to reject Porter's "tolling" argument. To allow Porter to file suit and prosecute his action in the wrong county would undermine the legislative intent and sound policy of expeditiously resolving creditor's claims against a decedent's estate. *Id.* at 559; RCW 11.96A.010, .020. Porter fails to cite a case in point, or a controlling statute or rule of court, to support his argument that filing suit in the wrong county tolled the 30-day deadline mandated by RCW 11.40.100(1).

Moreover, accepting Porter's tolling argument would allow a claimant whose creditor's claim was rejected to file suit in any county, regardless of where letters of administration were granted. This could result in multiple lawsuits in different counties, depending upon the number of executory real

estate contracts the decedent had for properties he or she owned throughout the state, and the number of creditor's claims being asserted in the various counties in which the properties were located. Such piecemeal litigation is not what the Legislature intended in enacting TEDRA.

D. Porter's Authorities Do Not Support His Tolling Argument.

In support of his "tolling" argument, Porter relies upon CR 3 and RCW 4.28.020, along with a single case: *Russell v. Marenakos Logging Co.*, 61 Wn.2d 761, 380 P.2d 744 (1963).²⁴ Porter's authorities are inapposite. TEDRA is a special proceeding. RCW 11.96A.090(1) states: "A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules." CR 1 states that the civil rules "govern the procedure in the superior court . . . with the exceptions stated in rule 81." CR 81(a) states that the general civil rules do not apply "where inconsistent with rules or statutes applicable to special proceedings".

Accordingly, the statute governing the commencement of a TEDRA action, RCW 11.96A.100(1) ("[a] judicial proceeding under RCW 11.96A.090 is to be commenced by the filing of a petition with the court") trumps CR 3 in an action commenced against the assets of a decedent's estate.

²⁴ See Appellant's br. at 8, 15, 19, 30-31.

TEDRA's specific venue statute, RCW 11.96A.050(5), also trumps any inconsistent venue statute. Where two statutory provisions governing venue seemingly conflict, the more specific venue statute controls. *Sim v. Parks & Recreation*, 90 Wn.2d 378, 382-83, 513 P.2d 1193 (1978); *Eubanks v. Brown*, 170 Wn. App. 768, 772, 285 P.3d 901 (2012). And where a specific venue statute makes one county the *exclusive venue* for adjudicating a dispute, the trial court of another county cannot disregard a timely challenge to venue and proceed to decide the case. *Sim*, 90 Wn.2d at 379, 384. Under the facts of this case, RCW 11.96A.050(5)'s use of the word "shall", made the Kittitas County Superior Court the exclusive venue for adjudicating Porter's rejected Creditor's Claim under RCW 11.40.100(1).

Porter's reliance on RCW 4.28.020 and RCW 4.16.170 is also misplaced. RCW 4.28.020 provides that, once the commencement of an action has occurred, "the court is deemed to have acquired jurisdiction to do and have control over all subsequent proceedings." RCW 4.16.170 provides that the commencement of a lawsuit tolls the statute of limitations. These general legal principles, however, do not apply to the facts of this case. Regarding RCW 4.28.020, Judge Tollefson found he did not have jurisdiction to decide Porter's complaint on his rejected Creditor's Claim. And, rather than appeal-

ing this decision, Porter conceded its correctness in bringing a motion to transfer both venue and jurisdiction to Kittitas County.

Regarding RCW 4.16.170, although the commencement of a lawsuit in a proper court having jurisdiction and venue over a cause tolls the statute of limitations, the statute does not apply here. Again, because RCW 4.16.170 is a general statute, the more specific statutes, RCW 11.40.100(1) and RCW 11.96A.050, control to preclude Porter's tolling argument. *See, e.g., Mason v. Georgia Pacific Corp.*, 168 Wn. App. 859, 870, 271 P.3d 381 (2012), *review denied*, 174 Wn.2d 1015 (2012); *State v. Hirschfelder*, 170 Wn.2d 536, 546, 242 P.3d 876 (2010).

To accept Porter's tolling argument would also require this Court to disregard the legislative intent in enacting RCW 11.40.100 and RCW 11.96A.050, which create bright-line rules requiring strict compliance. A court must "construe [a statute] in a manner that best fulfills the legislative purpose and intent." *Clark*, 92 Wn. App. at 810. Doing so here leads to one conclusion: although RCW 4.16.170 tolls the statute of limitations for an action commenced in "the proper court", it **does not** toll the statute of limitations for an action commenced in the wrong court. *Cloud*, 98 Wn. App. at 738.

The single case cited by Porter in support of his tolling argument - *Russell v. Marenakos Logging Co.* - is inapposite. *Russell* addressed the is-

sue of a motion to change venue under RCW 4.12.020(3) in a motor vehicle accident case, where the plaintiff had the option of bringing suit in one of two counties. By contrast, RCW 11.40.100(1) and RCW 11.96A.050(5) *do not* give Porter the option of filing in Pierce County.

E. Porter's Argument - That RCW 4.12.010 Required Him to File in Pierce County - is Misplaced; There is No Dispute That Title to the Real Property is Held by the Estate, and Porter's Claim Does Not Affect Title.

1. Porter's Claim for Specific Performance is an In Personam Action That Does Not Affect Title to Real Property; Therefore, RCW 4.12.010(1) Does Not Apply in This Case.

Porter argues that his suit for specific performance affected title to the decedent's Pierce County property; therefore, RCW 4.12.010(1) compelled him to file suit on his rejected Creditor's Claim in Pierce County. The argument is misplaced. Title to the decedent's Pierce County real property is not in dispute. Porter admits he has not fully paid the purchase price on the alleged executory real estate contract; therefore, he has no claim to title.

As this Court recently stated in *Bank of N.Y. v. Hooper*, 164 Wn. App. 295, 263 P.3d 1263 (2011), *review denied*, 173 Wn.2d 1021 (2012): "A real estate contract is an agreement for the purchase and sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. Legal title does not pass to the purchaser until the contract price is paid in full." *Id.* at 302 (quoting *Tomlinson v. Clarke*, 118 Wn.2d 498, 504, 825 P.2d 706 (1992)).

The Washington Supreme Court has "long recognized the distinction between jurisdiction to adjudicate title to land and jurisdiction to settle the parties' personal interests in real estate." *In re Kowalewski*, 163 Wn.2d 542, 548-49, 182 P.3d 426 (2008). Thus, "***a suit for specific performance of a contract to convey real estate is a transitory one*** [which] affects the parties to the action personally, ***but does not determine title.***" *Id.* at 549 (emphasis added) (quoting *Rosenbaum v. Evans*, 63 Wash. 506, 508-09, 115 P. 1054 (1911)); *see also*, *Oestreich v. Ocean Shores Estates, Inc.*, 83 Wn.2d 143, 144-45, 516 P.2d 507 (1973); *Silver Surprise, Inc. v. Sunshine Mining Co.*, 74 Wn.2d 519, 525-26, 445 P.2d 334 (1968).

Porter's argument - that a vendee in an executory real estate contract has a substantial interest in the real property; therefore, RCW 4.12.010(1) required him to file suit in Pierce County, where real property was located - fails to recognize the clear distinction between an action involving "*an interest*" in property and an action "*affecting title*" to property. Although Porter may have "an interest" in the Pierce County real property, his interest does not affect title for purposes of RCW 4.12.010. The statute, therefore, does not apply in this case. *In re Kowalewski*, 163 Wn.2d at 549.

Porter's attempt to distinguish *In re Kowalewski* fails. The case involved a husband's motion to vacate provisions of a marital dissolution decree, claiming the court exceeded its jurisdiction when it distributed owner-

ship interests in real property located in Poland. The Court disagreed, finding the husband "fail[ed] to recognize the distinction between jurisdiction to adjudicate personal interests in real property, which is a transitory action, and jurisdiction to adjudicate legal title to real property, which is a local action that must be brought in the situs state." *In re Kowalewski*, 963 Wn.2d at 547.

The Court held:

Here the trial court's jurisdiction over the parties in the action clearly encompasses the power to adjudicate their personal interests in the real property located in Poland. ***The subject matter of the dissolution action is not an action to settle title to real estate*** - it is not an in rem action over property in Poland. Rather, ***it is an in personam action in which a Washington court has jurisdiction to determine that parties' relative interests in all property brought to the court's attention.***"

Id. at 549-50 (emphasis added).

As in *In re Kowalewski*, the Kittitas County Superior Court had jurisdiction over all assets of the decedent's estate, and to adjudicate all claims against the estate, including Porter's claim for specific performance and his claim for unjust enrichment. *See* RCW 11.96A.020-.050; RCW 11.96A.060, RCW 11.96A.080.

2. The Cases Relied Upon by Porter to Support His Jurisdiction Argument Under RCW 4.12.010(1) Are Inapposite.

Porter cites *Cascade Sec. Bank v. Butler*, 88 Wn.2d 777, 567 P.2d 631 (1977) to support the proposition that an executory real estate contract creates an interest in "title", thus requiring him to bring suit on the contract where the

property is located.²⁵ The argument is without merit. The issue before the *Butler* Court was "whether the interests of a real estate contract purchaser constitutes 'real estate' within the meaning of the judgment lien statutes, RCW 4.56.190 and 4.56.200." *Id.* at 779. The case does not stand for the proposition that a suit for specific performance is an *in rem* action involving title to real property.

Porter also cites this Court's decision in *Bank of New York* to support his argument. The issue presented in *Bank of New York* was "whether the trial court erred in ordering Royal Pottage the 'fee owner' of the property." *Bank of New York*, 164 Wn. App. at 300. The case turned on the interpretation of RCW 7.28.300, under which "the record owner of a property may request property title be quieted against a deed of trust on that real estate." *Id.* at 301. In reaching its decision, the Court stated:

Royal Pottage stands in Mr. Barbanti's shoes as a real estate contract vendee by virtue of a 2003 Barbanti-Royal Pottage quit claim deed. . . . ***But Royal Pottage did not acquire any greater right, title, or interest than held by Mr. Barbanti in the real estate contract. Thus, BNY's concerns over the 'fee owner' language used by the trial court are well founded. Because BNY is the Hoopers' assignee of the seller's interest in the real estate contract, it holds legal title to the property as security for the performance of the contract conditions. If the real estate contract provisions are performed, BNY will be obligated to execute and deliver a statutory fulfillment deed.***

Id. at 301-302 (emphasis added) (internal citations omitted).

²⁵ See Appellant's br. at 35-37.

The Court concluded: "Because BNY is separately litigating its ownership rights under the real estate contract, it is premature, as BNY argues, to order that Royal Pottage is the 'fee owner' when Royal Pottage holds no more than a vendee's interest in the real estate contract. BNY correctly cites *Tomlinson v. Clarke*, 118 Wn.2d 498, 504, 825 P.2d 706 (1992):

"A real estate contract is an agreement for the purchase and sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. ***Legal title does not pass to the purchaser until the contract price is paid in full.***"

Id. at 302 (emphasis added).

In short, *Bank of New York* does not support Porter's argument that his claim for specific performance required him to file suit in Pierce County. On the contrary, it supports Boisso's argument, well-settled under Washington case law, that a suit for specific performance on an executory real estate contract is a transitory action that does not determine or affect title to the real property itself. *In re Kowalewski*, 163 Wn.2d at 549.

Porter also relies on the following inapposite cases: *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946); *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956); and *Ralph v. State Dep't of Natural Res.*, 171 Wn. App. 262, 286 P.3d 992 (2012). *Cugini* involved an action to ***quiet title*** to a tract of timber land. *Id.* at 402. Porter is not seeking to quiet title to the property (the parties agree that title is held by the decedent); rather,

his claim is for specific performance of an alleged executory contract.

In *Snyder*, the plaintiffs filed suit alleging they were the owners of a certain automobile. *Snyder*, 48 Wn.2d at 637. The case was decided under RCW 4.12.010(2), which governs matters involving *personal property*, not those involving real property under RCW 4.12.010(1).

In *Ralph*, the court held that, under RCW 4.12.010(1), "actions alleging *injury to property* must be commenced in the county where that property is located." *Ralph*, 171 Wn. App. at 264 (emphasis added). The case is inapposite, because Porter is not claiming damages for injury to property.

F. Porter's Argument - That RCW 4.12.010(1) Required Him to File Suit in Pierce County - is Also Misplaced Under the "Priority of Action Rule", Which Mandates that the Kittitas County Superior Court, as the Court First Acquiring Jurisdiction Over the Cause, Retains Jurisdiction to Adjudicate the Matter to the Exclusion of All Other Courts.

The "priority of action rule" involves jurisdiction principles; its purpose is to avoid unseemly and expensive jurisdictional conflicts. *Atlantic Cas. Ins. Co. v. Oregon Mut.*, 137 Wn. App. 296, 302, 153 P.3d 211 (2007). "The rule provides that the first court to obtain jurisdiction over a case possesses exclusive jurisdiction to the exclusion of other coordinate courts." *Id.*; *City of Yakima v. Firefighters*, 117 Wn.2d 655, 675, 818 P.2d 1076 (1991); *In re Freitas*, 53 Wn.2d 722, 727, 336 P.2d 865 (1959).

Under the "priority of action rule", once a court has asserted jurisdiction over a pending cause, another court must decline jurisdiction. *City of*

Yakima, 117 Wn.2d at 675-76. Indeed, it would be an error of law for the second court to accept jurisdiction. *Id.* at 676; *see also, In re Freitas*, 53 Wn.2d at 727-28. ***Because the "priority of action rule" involves jurisdiction principles, the proper remedy is dismissal of the second action.*** *Gilman v. Gilman*, 41 Wn.2d 319, 325, 249 P.2d 361 (1952) (writ of prohibition issued against superior court in second action prohibiting it from entering any order "except an order of dismissal"); *Atlantic Cas. Ins. Co.*, 137 Wn. App. at 307 (summary judgment dismissal of second action required under the "priority of action rule").

The Kittitas County Superior Court had both subject matter jurisdiction and venue over Porter's rejected Creditor's Claim *before* he filed his Pierce County action on his rejected claim. *See, e.g.,* RCW 11.40.070, RCW 11.40.100(1), and RCW 11.96A.050(5). As such, "the priority of action rule" barred the Pierce County Superior Court from adjudicating the same matter, as Pierce County Judge Tollefson agreed.²⁶

G. Porter's Authorities Fail to Support His Argument That His Claims Against the Decedent Are Not Governed by Title 11 RCW.

Contradicting his own Creditor's Claim, which he filed under RCW

²⁶ *See* CP 62, CP 65-66, and CP 95-98.

11.40.070 in the Kittitas County Superior Court,²⁷ Porter now argues that "the creditor claim provisions in RCW 11.40 do not apply to [his] claims to the Pierce County Properties."²⁸ To support his argument, Porter cites the following cases, each of which is inapposite: *Witt v. Young*, 168 Wn. App. 211, 275 P.3d 1218 (2012) (citing *Smith v. McLaren*, 58 Wn.2d 907, 365 P.2d 331 (1961)), and *Olsen v. Roberts*, 42 Wn.2d 862, 259 P.2d 418 (1953).

Witt involved a meretricious relationship during which the couple acquired and maintained a home on 15 acres. *Witt*, 168 Wn. App. at 213. Witt argued that, by virtue of the meretricious relationship, all of the couple's property was held as tenants in common. *Id.* at 215. She thus sought to partition the property, with one-half going to her, and one-half going to her deceased partner's estate. *Id.* at 217.

Under these facts, the *Witt* Court held that RCW 11.40.010 did not apply, because Witt's claim ***was not against the decedent***; instead, it was to partition the property ***jointly owned by Witt and her deceased partner as tenants in common***. *Id.* at 217-18. Thus, Witt was merely seeking to have her own property interest segregated from that of her deceased partner, with the latter's interest passing to his estate. *Id.* at 218-19. As the court stated: "Witt's claim is better characterized as challenging ***the inclusion of her prop-***

²⁷ See Appendix 1 hereto.

²⁸ See Appellant's br. at 27.

erty in the estate's inventory." *Id.* at 220 (emphasis added). Porter, by contrast, is not seeking to segregate a joint ownership interest in the Pierce County property from the Estate's inventory.

The secondary cases relied on by Porter, *Smith* and *Olsen*, are likewise inapposite. Each case was distinguished in *Witt*, as follows:

Smith and *Olsen* both hold ***that a claim for property as a tenant in common is not a creditor's claim*** and that a complaint claiming rights in the property as a tenant in common is not an action by a creditor of the estate. The court noted that these were not claims that the estate was indebted to the parties seeking relief and that the actions merely sought to establish the parties' interest in specific property and to exclude that interest from the estate's inventories. *Smith*, 58 Wn.2d at 909; *Olsen*, 42 Wn.2d at 865-66.

Witt, 168 Wn. App. at 218 (emphasis added).

Witt, *Smith*, and *Olsen* can all be summarized as follows: when a deceased spouse or meretricious partner dies, the estate of the decedent steps into the shoes of the deceased spouse or partner, and now holds the property as a tenant in common with the surviving spouse or partner. *See Witt*, 168 Wn. App. at 217. As such, the surviving spouse or partner is not making a claim against the estate for any interest in the decedent's property; rather, he or she is simply attempting to segregate his or her own property from the decedent's.

By contrast, Porter and the decedent were never joint owners of the property, whether as tenants in common, or otherwise. Title to the real prop-

erty was always held by the decedent, and then passed to his estate upon his death. Porter's claim to title was contingent upon paying off the alleged purchase price. *Bank of N.Y.*, 164 Wn. App. at 302. Until such time, Porter had no ownership interest in the property to allow him to segregate it from the Estate's inventory of assets.

H. Porter's Admissions Estop Him From Asserting That The Pierce County Superior Court Had Jurisdiction and Venue to Adjudicate His Rejected Creditor's Claim.

As recently stated in *Mukilteo Ret. Apartments v. Mukilteo Investors LP*, 176 Wn. App. 244, 310 P.3d 814 (2013), *review denied*, 179 Wn.2d 1025 (2014): "Judicial admissions . . . have the effect of withdrawing a fact from issue and *dispensing wholly with the need for proof of the fact*. . . . Indeed, facts judicially admitted are facts established not only beyond the need of evidence to prove them, *but beyond the power of evidence to controvert them*." *Id.* at 263, n. 8 (italics original) (internal quotations and citations omitted).

By bringing his motion to have the Pierce County Superior Court transfer both *venue and jurisdiction* of his case to Kittitas County, because his "action was of a nature that requires change of venue and jurisdiction to Kittitas County", Porter admitted the Kittitas County Superior Court had jurisdiction and venue to adjudicate his rejected Creditor's Claim.²⁹ Porter's

²⁹ See Appendix 5 hereto at ¶¶1.4, 1.5, 2.2, and 2.3.

admission should bar him from now arguing that RCW 4.12.010(1) required him to bring suit in Pierce County.

I. Porter's Pierce County Complaint Was Barred Under the Doctrines of Res Judicata and/or Collateral Estoppel.

Porter argues that his claim for unjust enrichment, which he asserted in the Pierce County Superior Court action, was not fully adjudicated when the Kittitas County Superior Court dismissed his Creditor's Claim. The argument is baseless. Both Porter's Creditor's Claim and his Pierce County Complaint stated the value of the claim was \$116,900.³⁰ Although Porter's Complaint also sought to recover money he allegedly spent in improving the property,³¹ this claim was also stated in his rejected Creditor's Claim.³²

Every claim raised in Porter's Complaint had already been adjudicated as being time-barred by the trial court's order finding that, "[b]ecause respondent, Kevin Porter, failed to file a complaint in the Kittitas County Superior Court within thirty (30) days after the rejection of his Creditor's Claim in these proceedings, all claims stated in said Creditor's Claim, and his response to the personal representative's petition herein, are forever barred."³³

The doctrines of collateral estoppel and res judicata thus precluded

³⁰ See Appendix 1 hereto (Creditor's Claim) and Appendix 3 hereto (Complaint at ¶10).

³¹ *Id.* at ¶12.

³² See Creditor's Claim at Appendix 1 hereto.

³³ See Appendix 6 hereto at 2, ¶1.

Porter from pursuing them in his Complaint. "Collateral estoppel, modernly referred to as issue preclusion, bars re-litigation of an issue in a subsequent proceeding involving the same parties." *Ullery v. Fulleton*, 162 Wn. App. 596, 602, 256 P.3d 406 (Div. III 2011). Res judicata, or claim preclusion, "prevents a second litigation of *issues* between the parties, even though a different claim or cause of action is asserted." *Id.* (italics added).

Assuming *arguendo* that Porter's Complaint alleged additional monetary claims against the decedent, which were not included in his Creditor's Claim, those claims would still be time-barred under RCW 11.40.051(1). The statute states, in relevant part: "[A] person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent . . . unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations: (a) If the personal representative provided notice [which is the case here] . . . the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of the notice to the creditor; and (ii) Four months after the date of first publication of the notice . . ."

Because RCW 11.40.051(1) requires that all claims against a decedent to be presented as a creditor's claim under RCW 11.40.070, as a condition precedent to further pursuing those claims, Porter's failure to file a creditor's claim on any purported additional claims forever bars them. RCW

11.40.051(1); RCW 11.40.100(1); RCW 11.96A.050(5).

J. Boisso Should be Awarded His Attorney's Fees on Appeal.

RAP 18.1(a) provides for attorney fees on appeal if allowed under applicable law. RAP 18.9(a) allows the appellate court to order a party or counsel to pay the other side's attorney's fees for filing a frivolous appeal. Porter's counsel has rehashed the exact same arguments that were rejected by both the Pierce County and the Kittitas County Superior Courts; he admitted that venue and jurisdiction were proper in the Kittitas County Superior Court when he made his motion to change venue and jurisdiction; and the civil rules, statutes, and cases he cites lend no support to his arguments.

Any reasonable inquiry, prior to filing the appeal, should have convinced Porter's counsel that there was no basis in fact or law to support the appeal. "An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised." *Johnson v. Mermis*, 91 Wn. App. 127, 137, 955 P.2d 826 (1998).

Alternatively, "RCW 11.96A.150 grants courts great discretion in awarding attorney fees both at trial and on appeal." *Estate of Fitzgerald*, 172 Wn. App. 437, 453, 294 P.3d 720 (2012). Here, the trial court awarded attor-

ney's fees under RCW 11.96A.150.³⁴ This Court should do the same.

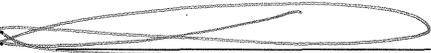
V. CONCLUSION

RCW 11.40.100(1) and RCW 11.96A.050(5) required Porter to file suit on his rejected Creditor's Claim for specific performance and unjust enrichment in the Kittitas County Superior Court within thirty (30) days after his Creditor's Claim was rejected, or the claim would be forever barred. Porter failed to do so, and filing suit within thirty (30) days in the Pierce County Superior Court did not toll RCW 11.40.100(1)'s mandate that suit must be timely brought in "the proper court", which requires strict compliance. This Court should, therefore, affirm the trial court's judgments and award Boisso his attorney's fees on appeal.

DATED this 15 day of May, 2014.

Respectfully submitted,

LATHROP, WINBAUER, HARREL,
SLOTHOWER & DENISON, LLP

By 

Douglas W. Nicholson, WSBA #24854
Attorney for Respondent
Nathaniel Boisso

³⁴ See Appendix 7 hereto (CP 320-21 in Appeal No. 318095).

CERTIFICATE OF SERVICE

I certify that on the 16th day of May, 2014, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Attorneys for Appellant:

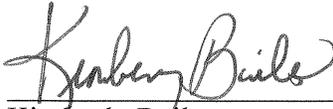
Stephen A. Burnham
Bryce Haggard Dille
317 S. Meridian
Puyallup WA 98371-5913

(X) Via Fed Ex Overnight

Attorney for the Estate of Charles Boisso:

Jeffrey D. Winter
604 N. Main Street
Ellensburg WA 98926

(X) Via E-Mail:
jdwinter@hotmail.com



Kimberly Bailes

Appendix 1

FILED

12 DEC 17 AM 8:34

KITTITAS COUNTY
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITTITAS

In re the Estate of:

Charles R. Boisso,

Deceased.

No. 12-4-00086-7

CREDITOR'S CLAIM
(RCW 11.40.070)

Claimant's Name: Kevin Porter

and Address: Post Office Box 105, Kapowsin, WA 98334

If Claim made by Claimant's Agent: Agent's Name: Bryce H. Dille

and Address: 317 South Meridian, Puyallup, WA 98371

Nature of Agent's Authority: Attorney at Law

Facts and circumstances surrounding the Claim: In August of 1999, Claimant entered into an agreement with the Decedent to purchase two one and one half acre parcels in Pierce County, Washington, known as tax parcel numbers 0418245006 and 0418245008, the legal description of which is as follows:

LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91BO

The purchase price was agreed upon to be \$120,000.00 and since August of 1999 until the date of death, the Claimant has paid \$116,900.00 to the Decedent; therefore, the balance owing is \$3,100.00 to complete the payment of the purchase price. Claimant requests that upon payment

Creditor's Claim - Page 1 of 2

I:\DATA\BHD\M\Porter, Kevin 16775.001\Creditor's Claim.rtf

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

000001

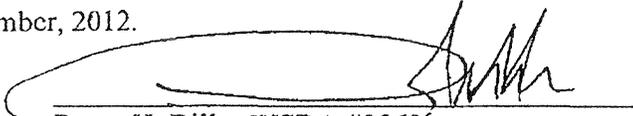
13

1 of the principal balance due, the estate execute a deed in and to the property described herein
2 conveying the property to the Claimant free and clear of all liens and encumbrances in
3 accordance with the agreement of the parties. The Claimant has resided upon and occupied the
4 property and has claimed it as his own since 1999 and has paid for all improvements with respect
5 to the property as well as reimbursed the Decedent for the real property taxes assessed against
6 the property. Therefore, Claimant claims an interest in and to said property as the purchaser and
7 requests a statutory warranty deed conveying title to the same to the Claimant upon payment of
8 the balance of the purchase price.

9 Amount of Claim: \$116,900.00

10 If Claim is secured, the nature of the security; if not yet due, the date when it will become due;
11 and if contingent, the nature of the uncertainty: Property described above is security. See
12 attached Notice of Claim of Interest.

13 DATED this 13 day of December, 2012.

14 
15 Bryce H. Dille, WSBA #2862
16 of Campbell, Dille, Barnett & Smith
17 Attorneys for Creditor

18 I acknowledge receipt of this Creditor's Claim on Date: _____

19 _____
20 Personal Representative

21 I allow this Creditor's Claim in the amount of \$ _____

22 I reject this Creditor's Claim.

23 Dated: _____

24 Signed: _____

Printed Name: _____
Personal Representative

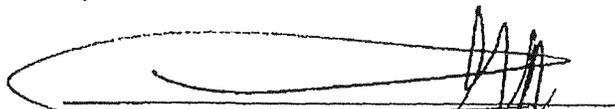
After Recording Return to:
Bryce H. Dille
Campbell, Dille, Barnett & Smith, PLLC
317 South Meridian
P.O. Box 488
Puyallup, WA 98371

NOTICE OF CLAIM OF INTEREST

Grantor: Kevin Porter
Grantee: Estate of Charles Boisso
Legal Description: LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24
TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO
PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF
1-036 SEG X0833PP ES DC4726JG11/1/91BO
Complete Legal Description is located on Page _____ of document
Assessor's Tax Parcel Number: 0418245006 and 0418245008

NOTICE IS HEREBY GIVEN that Kevin Porter hereby claims right, title and interest in and to the property described above as an ownership interest in said property pursuant to an unrecorded purchase agreement with the decedent. In accordance therewith, has filed a Creditor's Claim in the Estate of Charles Boisso, Kittitas County Superior Court, Cause No. 12-4-00086-7, a copy of which is attached hereto. The purpose of this claim is to provide notice to all parties that Kevin Porter claims right, title and interest in and to said property.

DATED this 13 day of December, 2012.


Bryce H. Dille, Attorney for Grantor

000003

Appendix 2

FILED

12 DEC 31 PM 4:00

KITTITAS COUNTY
SUPERIOR COURT CLERK

KITTITAS COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

In Re the Estate of:

CHARLES BOISSO,

Decedent.

NO. 12-4-00086-7

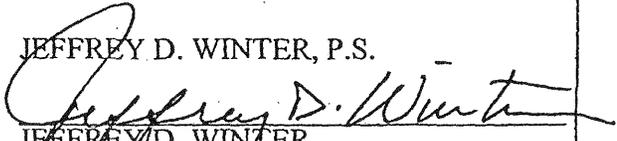
NOTICE OF REJECTION OF
CREDITOR'S CLAIM

TO: Kevin Porter, through his Agent, Bryce H. Dille

PLEASE TAKE NOTICE that the claim in the amount of \$116,900.00 made against the above-named Estate by Kevin Porter through his Agent: Bryce H. Dille, 317 South Meridian, Puyallup, Washington 98371, is hereby rejected by the Personal Representative herein due to a dispute as to the validity of the claim and Claimant's status as a creditor. Pursuant to RCW 11.40.100, you must bring suit in the proper Court against the Personal Representative within thirty days after the date of the postmark of the mailing of this Notice, and that otherwise your claim will be forever barred.

DATED this 31st day of December, 2012.

JEFFREY D. WINTER, P.S.



JEFFREY D. WINTER
Attorney for Personal Representative
WSBA# 20105

Appendix 3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

Kevin Porter,

Plaintiff,

No. 13-2-05804-4

vs.

COMPLAINT FOR SPECIFIC
PERFORMANCE AND/OR
DECLARATORY JUDGMENT

Nathanial (Nate) Boisso, Personal
Representative of the Estate of Charles
Boisso,

Defendant.

COMES NOW the plaintiff, Kevin Porter, by and through his attorney, Bryce H. Dille of Campbell, Dille, Barnett & Smith, and for cause of action against the defendant, Nathanial (Nate) Boisso, Personal Representative of the Estate of Charles Boisso, states as follows:

1. Charles Boisso is deceased and probate proceedings concerning his estate have been instituted in the Superior Court for the County of Kittitas under Cause No. 12-4-00086-7 and the defendant, Nathanial (Nate) Boisso, has been appointed personal representative of the Estate of Charles Boisso.

2. Venue and jurisdiction of this action are proper in this Court.

1 3. The plaintiff filed a Creditor's Claim seeking enforcement of a contract to
2 purchase certain real property in Pierce County in said estate, a copy of which is attached hereto
3 and incorporated herein as Exhibit "A".
4

5 4. Said Creditor's Claim was rejected on or about December 31, 2012, a copy of said
6 Notice of Rejection of Creditor's Claim is attached hereto and incorporated herein as Exhibit
7 "B".

8 5. In August of 1999, the plaintiff and Charles Boisso entered into an agreement
9 under the terms of which the plaintiff would purchase from Charles Boisso two parcels of real
10 property in Pierce County, Washington, identified as Pierce County Tax Parcel Numbers
11 0418254006 and 0418245008, the legal descriptions of which are as follows:

12 LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24
13 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT
14 PORTION DEEDED TO PIERCE COUNTY ETN 772700
15 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG
 X0833PP ES DC4726JG11/1/91BO

16 6. At that time, the plaintiff paid Charles Boisso \$2,000.00 by way of a down
17 payment on the property, and on August 2, 1999, the plaintiff paid Charles Boisso an additional
18 \$1,000.00 for the purchase of the property, and on November 26, 1999, an additional \$1,000.00
19 payment was paid to be applied against the purchase price.

20 7. On or about January 2, 2000, an additional \$1,200.00 was paid to be applied
21 against the purchase price, for total payments up to that date of \$4,200.00, which was to be
22 applied against the principal of the purchase price.

23 8. In July of 2001, the parties agreed that the balance owing was \$106,950.00, a
24 copy of a correspondence written by Charles Boisso to the plaintiff indicating the purchase price

1 is attached hereto and incorporated herein as Exhibit "C".

2
3 9. In accordance with the terms of the agreement, the parties agreed that the
4 continued payments to be made by the plaintiff would be deducted from the principal until a
5 formal purchase and sale agreement was signed. Said agreement was never signed.

6 10. The plaintiff has paid to Charles Boisso approximately \$116,900.00 which has
7 been applied against the purchase price of the property.

8 11. Based upon the foregoing allegations, the plaintiff is entitled to a declaratory
9 judgment confirming the terms and provisions of the contract under which the plaintiff was
10 purchasing the property from the Charles Boisso (and now, his estate) and to a court order
11 specifically enforcing that contract, including determining the balance due for the purchase of
12 said property and confirming the plaintiff's right to acquire the property.

13 12. Alternatively, the plaintiff is entitled to damages for unjust enrichment because he
14 has continually resided on the property from 1999 to the present date and has expended
15 thousands of dollars in maintaining and improving the property, all of which expenditures and
16 improvements were made with the full knowledge of Charles Boisso.

17
18 13. The plaintiff reasonably relied on the statements and conduct of Charles Boisso
19 and the continued assent of Charles Boisso in accepting payments and his full knowledge of the
20 improvements that the plaintiff was providing to the property that justice can only be provided
21 by specific performance.

22 **WHEREFORE**, the plaintiff prays that this court:

23 A. Enter a judgment specifically enforcing the terms of the purchase and sale
24 agreement under which the plaintiff has been purchasing the property, including a declaratory

1 judgment confirming the terms and provisions of said contract;

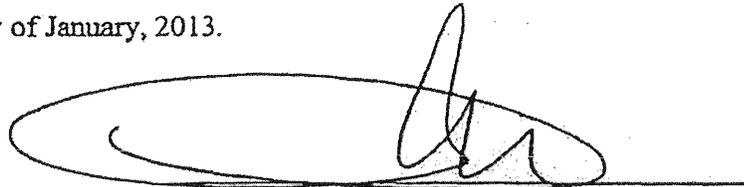
2 B. Enter a judgment establishing the plaintiff's right, title and interest in the property
3 and determine the nature and extent of said right, title and interest of the plaintiff;

4 C. Alternatively, enter a judgment for damages for unjust enrichment in an amount
5 to be fully proven at trial;

6 D. Enter a judgment that the defendant had no basis to reject the plaintiff's creditor
7 claim and that the claim should be allowed; and

8 E. For such other and further relief as the court deems just and equitable in the
9 premises, including recoverable attorney fees and costs of suit.
10

11 DATED this 29th day of January, 2013.

12 

13 Bryce H. Dille, WSBA #2862
14 of Campbell, Dille, Barnett & Smith
15 Attorneys for Plaintiff
16

EXHIBIT "A"

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FILED

DEC 17 2012

JOYCE L. JULSRUD, CLERK
KITITIAS COUNTY, WASHINGTON

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITITIAS

In re the Estate of:

Charles R. Boisso,

Deceased.

No. 12-4-00086-7

CREDITOR'S CLAIM
(RCW 11.40.070)

Claimant's Name: Kevin Porter

and Address: Post Office Box 105, Kapowsin, WA 98334

If Claim made by Claimant's Agent: Agent's Name: Bryce H. Dille

and Address: 317 South Meridian, Puyallup, WA 98371

Nature of Agent's Authority: Attorney at Law

Facts and circumstances surrounding the Claim: In August of 1999, Claimant entered into an agreement with the Decedent to purchase two one and one half acre parcels in Pierce County, Washington, known as tax parcel numbers 0418245006 and 0418245008, the legal description of which is as follows:

LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91BO

The purchase price was agreed upon to be \$120,000.00 and since August of 1999 until the date of death, the Claimant has paid \$116,900.00 to the Decedent; therefore, the balance owing is \$3,100.00 to complete the payment of the purchase price. Claimant requests that upon payment

Creditor's Claim - Page 1 of 2

I:\DATA\BHD\VP\Porter, Kevin 16775.001\Creditor's Claim.rtf

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.

Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

*Nathaniel
Dille*

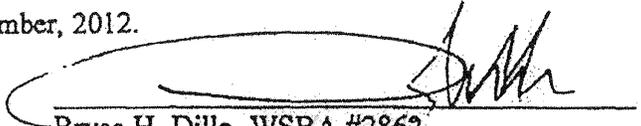
000027

1 of the principal balance due, the estate execute a deed in and to the property described herein
2 conveying the property to the Claimant free and clear of all liens and encumbrances in
3 accordance with the agreement of the parties. The Claimant has resided upon and occupied the
4 property and has claimed it as his own since 1999 and has paid for all improvements with respect
5 to the property as well as reimbursed the Decedent for the real property taxes assessed against
6 the property. Therefore, Claimant claims an interest in and to said property as the purchaser and
7 requests a statutory warranty deed conveying title to the same to the Claimant upon payment of
8 the balance of the purchase price.

9 Amount of Claim: \$116,900.00

10 If Claim is secured, the nature of the security; if not yet due, the date when it will become due;
11 and if contingent, the nature of the uncertainty: Property described above is security. See
12 attached Notice of Claim of Interest.

13 DATED this 13 day of December, 2012.

14 
15 Bryce H. Dille, WSBA #2862
16 of Campbell, Dille, Barnett & Smith
17 Attorneys for Creditor

18 I acknowledge receipt of this Creditor's Claim on Date: _____

19 _____
20 Personal Representative

21 I allow this Creditor's Claim in the amount of \$ _____

22 I reject this Creditor's Claim.

23 Dated: _____

24 Signed: _____

Printed Name: _____
Personal Representative

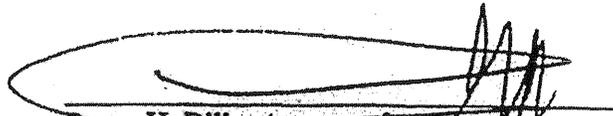
After Recording Return to:
Bryce H. Dille
Campbell, Dille, Barnett & Smith, PLLC
317 South Meridian
P.O. Box 488
Puyallup, WA 98371

NOTICE OF CLAIM OF INTEREST

Grantor: Kevin Porter
Grantee: Estate of Charles Boisso
Legal Description: LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24
TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO
PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF
1-036 SEG X0833PP ES DC4726JG11/1/91B0
Complete Legal Description is located on Page _____ of document
Assessor's Tax Parcel Number: 0418245006 and 0418245008

NOTICE IS HEREBY GIVEN that Kevin Porter hereby claims right, title and interest in and to the property described above as an ownership interest in said property pursuant to an unrecorded purchase agreement with the decedent. In accordance therewith, has filed a Creditor's Claim in the Estate of Charles Boisso, Kittitas County Superior Court, Cause No. 12-4-00086-7, a copy of which is attached hereto. The purpose of this claim is to provide notice to all parties that Kevin Porter claims right, title and interest in and to said property.

DATED this 13 day of December, 2012.


Bryce H. Dille, Attorney for Grantor

123,5-01
381-11001

000029

STATE OF WASHINGTON)
) §
COUNTY OF PIERCE)

On this day personally appeared before me Bryce H. Dille, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13 day of December, 2012.



Printed Name: Toni M. Conway
NOTARY PUBLIC in and for the State of
Washington, residing at Puyallup
My commission expires: 9/6/16

EXHIBIT “B”

000031

FILED

DEC 31 2012

JOYCE L. JULSRUD, CLERK
KITITIAS COUNTY, WASHINGTON

KITITIAS COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

In Re the Estate of:

CHARLES BOISSO,

Decedent.

NO. 12-4-00086-7

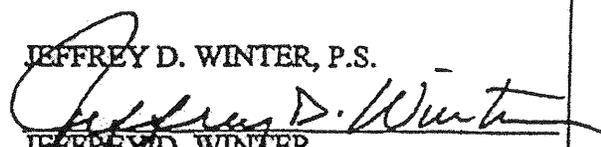
NOTICE OF REJECTION OF
CREDITOR'S CLAIM

TO: Kevin Porter, through his Agent, Bryce H. Dille

PLEASE TAKE NOTICE that the claim in the amount of \$116,900.00 made against the above-named Estate by Kevin Porter through his Agent: Bryce H. Dille, 317 South Meridian, Puyallup, Washington 98371, is hereby rejected by the Personal Representative herein due to a dispute as to the validity of the claim and Claimant's status as a creditor. Pursuant to RCW 11.40.100, you must bring suit in the proper Court against the Personal Representative within thirty days after the date of the postmark of the mailing of this Notice, and that otherwise your claim will be forever barred.

DATED this 31st day of December, 2012.

JEFFREY D. WINTER, P.S.



JEFFREY D. WINTER
Attorney for Personal Representative
WSBA# 20105

EXHIBIT “C”

000033

July 17, 01

hi Kevin

I found the copy of the title finally - huh! I dated 7/26/01

Thanks for the payment last month!

I calculated what the monthly interest will be on the mortgage for the remaining balance of \$106,950 using 8.25% interest rate. Current rate with good credit is around 7.25%. People also talked to pay owner who holds the paper should ask 2-3% above bank rate, to help cover the risk - I'm asking 8.25%.

The yearly interest will be \$8819.00
monthly it will be \$734.33
so you'll need to pay \$734.33 interest
a month plus principal.

I've been taking all money given to me off the principal / no interest.

I'd really like to see a little more money monthly around the 20th - 250000.34 it's more regular

and closer to the interest plus
principal amount when we
do the paper work. I'll continue
to take total amount off principal
until we sign.

~~1-360-8~~ 1-509-933-1913

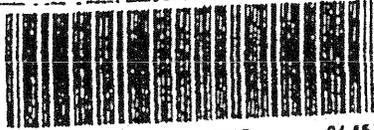
Charles

(Bonniville)

Also the Bonnevillier power co.
will be marking and cutting
dangerous trees on the front near
the lines. 6/10/01

See ya soon -

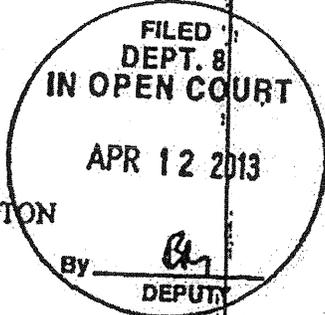
Appendix 4



13-2-05804-4 40347285 ORSP 04-15-13

The Honorable Brian Tollefson
Department 8
Hearing Date: Friday, April 12, 2013
Time: 9:00 a.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

KEVIN PORTER,

Plaintiff,

v.

NATHANIEL (NATE) BOISSO,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF CHARLES BOISSO,

Defendant.

NO. 13-2-05804-4

ORDER STAYING ALL FURTHER
PROCEEDINGS

(Clerk's Action Required)

THIS MATTER having come on for hearing this date upon defendant's motion to dismiss plaintiff's complaint, without prejudice, pursuant to CR 12(b), and the Court having reviewed the records and files herein, including all documents submitted by the parties with respect to said motion, and being otherwise fully advised in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. ALL FURTHER PROCEEDINGS IN THIS ACTION ARE HEREBY STAYED; and
2. Plaintiff is required to litigate whatever issues and claims concerning the alleged contract in Kittitas County where the probate was started; AND

000062

3 Defense Motion to Dismiss is Denied
4 Status Conf Set for Friday Oct 11, 2013 at 9AM
DONE IN OPEN COURT this 12 day of April, 2013.

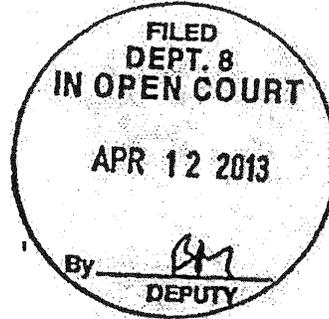
[Signature]
The Honorable Brian Tollefson

Presented by:

LATHROP, WINBAUER, HARREL,
SLOTHOWER & DENISON, L.L.P.

By:

~~_____~~
Douglas W. Nicholson, WSBA #24854
Attorney for Defendant, Nathaniel (Nate)
Boisso, Personal Representative of the
Estate of Charles Boisso



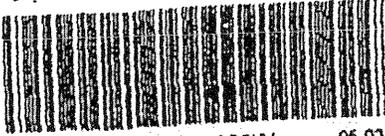
Approved as to Form and Content,
Notice of Presentation Waived:

CAMPBELL, DILLE, BARNETT & SMITH

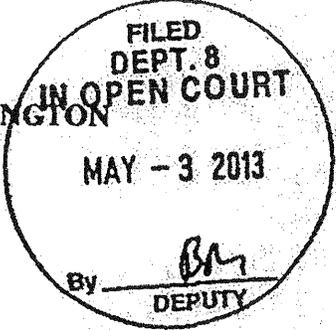
By:

Signed in open court with
Mr. Burnham appearing telephonically and
approving entry of order
Stephen A. Burnham, WSBA #13270
Attorney for Plaintiff, Kevin Porter

Appendix 5



13-2-05804-4 40467815 ORCHV 05-03-13



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

Kevin Porter,

Plaintiff,

No. 13-2-05804-4

vs.

ORDER TRANSFERRING VENUE
AND JURISDICTION TO KITTITAS
COUNTY

Nathaniel (Nate) Boisso, Personal
Representative of the Estate of Charles
Boisso,

Defendant.

I. HEARING

1.1 Date: April 26, 2013.

1.2 Notice of Hearing: Notice of hearing was served on or about the 18th day of April, 2013, on the attorney of record for the Defendant, Douglas Warr Nicholson, which date is at least five (5) days before the hearing.

1.3 Appearances: The Plaintiff appeared by and through his counsel of record, Stephen A. Burnham of Campbell, Dille, Barnett & Smith, P.L.L.C., and the Defendant appeared by and through his counsel of record, Douglas Warr Nicholson.

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

1 1.4 Purpose: To consider Plaintiff's Motion and Declaration to Transfer Venue
2 and Jurisdiction to Kittitas County, the County in which the probate of the Estate of Charles
3 Boisso was filed.

4 1.5 Evidence: Plaintiff's Motion and Declaration to Transfer Venue and Jurisdiction
5 to Kittitas County.

6
7 II. FINDINGS

8 The Court, having considered the evidence and argument of counsel for both parties,
9 finds as follows:

10 2.1 Declaration: The Declaration of Bryce H. Dille of Campbell, Dille, Barnett &
11 Smith, P.L.L.C. is sufficient.

12 2.2 Venue and Jurisdiction: Pursuant to Court's Order Staying All Further
13 Proceedings dated April 12, 2013, Plaintiff is required to litigate whatever issues and claims
14 concerning the alleged contract in Kittitas County where the probate was started.

15 2.3 Change: This action is of a nature that requires change of venue and jurisdiction
16 to the Kittitas County, the County in which the probate of the Estate of Charles Boisso was filed.

17
18 III. ORDER

19 On the basis of the foregoing findings, it is ordered that:

20 3.1 This cause shall be transferred to the Superior Court of the State of Washington
21 for Kittitas County. All costs of such transfer shall be borne by the plaintiff.

22 3.2 The Clerk of the Pierce County Superior Court shall transmit to the Clerk of the
23 Kittitas County Superior Court the pleadings and papers hearing and certified transcript of all

Also MAKE ARRANGEMENTS with the court reporter to provide

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

1 record entries up to and including this order within thirty (30) days of the date hereof, *if possible*
2 DONE IN OPEN COURT this 3rd day of April, 2013. *BT*

3
4 *BT*
5 _____
6 Judge

7 Presented by:

8 *SA Burnham*
9 _____
10 Stephen A. Burnham, WSBA#13270 of
11 Campbell, Dille, Barnett & Smith, P.L.L.C.
12 Attorneys for Plaintiff

13 Approved as to form; notice of presentment waived:

14 *[Signature]*
15 _____
16 Douglas Warr Nicholson, WSBA#24854 of
17 Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
18 Attorney for Defendant

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**FILED
DEPT. 8
IN OPEN COURT**
MAY - 3 2013
By *BT*
DEPUTY

Appendix 6

FILED
13 MAY 28 10:51 AM
KITTITAS COUNTY
SUPERIOR COURT CLERK

The Honorable Frances Chmielewski
Department 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITTITAS

IN RE THE ESTATE OF:

NO. 12-4-00086-7

CHARLES R. BOISSO,

Deceased.

ORDER GRANTING THE
PERSONAL REPRESENTATIVE'S
PETITION CLEARING TITLE TO
DECEDENT'S REAL PROPERTY
LOCATED IN PIERCE COUNTY,
AND DECLARING RESPONDENT
TO BE IN DEFAULT ON HIS
LEASE PAYMENTS

(Clerk's Action Required)

THIS MATTER having come on for hearing this date upon the personal representative's petition for an order clearing title to decedent's real property located in Pierce County, declaring respondent, Kevin Porter, to be in default on his lease payments, for which he owes the Estate the sum of \$5,250.00, and the Estate's request for its costs, including reasonable attorney's fees under RCW 11.96A.150, and the Court having reviewed the records and files herein, including all documents submitted by the parties with respect to said motion, and having heard oral argument, and being otherwise fully advised in the premises, NOW, THEREFORE,

SCANNED ORIGINAL
000300

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1 IT IS HEREBY ORDERED. ADJUDGED AND DECREED as follows:

2 1. Because respondent, Kevin Porter, failed to file a complaint in the Kittitas County
3 Superior Court within thirty (30) days after the rejection of his Creditor's Claim in these
4 proceedings, all claims stated in said Creditor's Claim, and his response to the personal
5 representative's petition herein, are forever barred;

6 2. Respondent, Kevin Porter, has no claim or right to, or any other ownership
7 interest of any kind in, the following-described real property of the Estate of Charles Boisso,
8 located in Pierce County, Washington:
9

10 Section 24 Township 18 Range 04 Quarter 13: L 2 OF SHORT PLAT 86-07-16-
11 0314 EXC THAT POR DEEDED TO P CO ETN 772700 TOG/W EASE &
12 RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES
DC4726JG11/1/91BO - Parcel #0418245006.

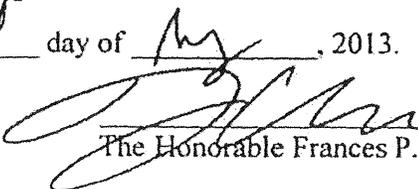
13 Section 24 Township 18 Range 04 Quarter 13 L 4 of S P 86-07-16-0314 EXC
14 THAT POR DEEDED TO P CO ETN 772700 TOG/W N 30 FT VAC ORD 96-
15 119 (AFN97-04-17-0106) TOG/W EAS & RESTRICTIONS OF REC OUT OF
16 1-036 SEG X0833PP ES DC4728JG11/1/19BO DC00275172 1/28/13 KG -
Parcel #0418245008.

17 ~~3. Respondent, Kevin Porter, is a tenant in possession of the above described real
18 property, and said respondent is in default on his lease payments to the Estate.~~

19 ~~4. As a result of his default, said respondent owes to the Estate the sum of unpaid
20 rent in the amount of \$5,250 as of the date of entry of this Order; and~~

21 ~~5. Pursuant to RCW 11.96A.150, the Estate shall be awarded its costs, including
22 reasonable attorney's fees, in an amount to be determined upon application for same.~~

23
24 DONE IN OPEN COURT this 25th day of Aug, 2013.

25
26 
The Honorable Frances P. Chmelewski

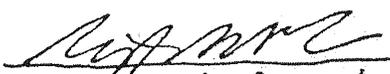
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Presented by:

LATHROP, WINBAUER, HARREL,
SLOTHOWER & DENISON, L.L.P.

By: 
Douglas W. Nicholson, WSBA #24854
Attorney for Nathaniel Boisso,
Personal Representative of the
Estate of Charles Boisso

APPROVED AS TO FORM


Stephen A. Burnham, WSBA #13270
Attorney for Kevin Porter

Appendix 7

FILED

13 AUG -5 AM 10:42

KITTITAS COUNTY
SUPERIOR COURT CLERK

The Honorable Frances Chmielewski
Department 1
Hearing Date: August 5, 2013
Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITTITAS

IN RE THE ESTATE OF:

CHARLES R. BOISSO,

Deceased.

NO. 12-4-00086-7

13-9 00470-2

FINAL JUDGMENT IN FAVOR OF
THE ESTATE OF CHARLES R.
BOISSO, DECEASED

(Clerk's Action Required)

AFFECTED PARCELS

Real property owned by the Estate of Charles R. Boisso, deceased, identified as Pierce

County Assessor's Tax Parcel Nos. 0418245006 and 0418245008, legally described as follows:

Section 24 Township 18 Range 04 Quarter 13: L 2 OF SHORT PLAT 86-07-16-0314 EXC THAT POR DEEDED TO P CO ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91BO - Parcel #0418245006.

Section 24 Township 18 Range 04 Quarter 13 L 4 of S P 86-07-16-0314 EXC THAT POR DEEDED TO P CO ETN 772700 TOG/W N 30 FT VAC ORD 96-119 (AFN97-04-17-0106) TOG/W EAS & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4728JG11/1/19BO DC00275172 1/28/13 KG - Parcel #0418245008.

Final Judgment in Favor of the Estate of
Charles R. Boisso, Deceased

Page 1 of 4

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (877) 962-8093
Tel (509) 925-6916

ORIGINAL
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2 **FINAL JUDGMENT SUMMARY**

3 Judgment Creditor: The Estate of Charles R. Boisso, Deceased.
4 Judgment Creditor's Attorney: Douglas W. Nicholson, of the law offices of
5 Lathrop, Winbauer, Harrel, Slothower &
6 Denison, LLP
7 Judgment Debtor: Kevin Porter
8 Judgment Debtor's Attorney: Steven A. Burnham, of the law offices of
Campbell, Dille, Barnett & Smith, PLLC
9 Statutory Costs: \$ 92.00
10 Attorney Fees: \$29,650.00
11
12 Total Judgment Amount (Award of
Attorney Fees & Costs): \$29,742.00
13
14 Post-Judgment Interest: 12% per annum on the total judgment
amount

15 **JUDGMENT**

16 This matter came before the Court on the petition of the personal representative of the
17 Estate of Charles R. Boisso, deceased, seeking to eliminate all claims asserted in the Creditor's
18 Claim of respondent, Kevin Porter, including respondent's claim of any ownership interest in the
19 decedent's above-identified Pierce County real property. On May 28, 2013, a hearing on the
20 petition was held before the Honorable Frances P. Chmielewski. Respondent was represented at
21 the hearing by legal counsel, Steven A. Burnham of Campbell, Dille, Barnett & Smith, PLLC.
22 Petitioner was represented at the hearing by legal counsel, Douglas W. Nicholson, of Lathrop,
23 Winbauer, Harrel, Slothower & Denison, LLP.
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1 The Court, having previously received and considered all documents submitted by the
2 respective parties on the petition, and having heard oral argument by counsel for the respective
3 parties, entered its Order on the petition on May 28, 2013. Said Order is incorporated by
4 reference herein.

5 Thereafter, on July 3, 2013, the Court entered its Order awarding petitioner's fees and
6 costs in the above-stated amounts. Said Order also incorporated by reference herein.

7 Accordingly, there being no further claims or issues remaining between respondent and
8 petitioner in this action, and consistent with the Court's above-referenced orders, it is hereby,
9

10 ORDERED, ADJUDGED AND DECREED that final judgment shall be entered in favor
11 of the Estate of Charles R. Boisso, deceased, as follows:

12 1. Because respondent, Kevin Porter, failed to file a complaint in the Kittitas County
13 Superior Court within thirty (30) days after the rejection of his Creditor's Claim in these
14 proceedings, all claims stated in said Creditor's Claim, and in his response to the personal
15 representative's petition in these proceedings, are forever barred.

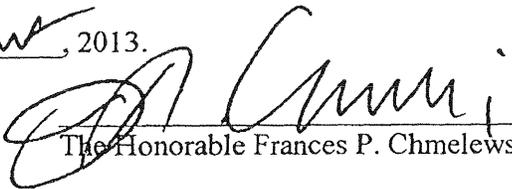
16 2. Respondent, Kevin Porter, has no claim or right to, or any other fee ownership
17 interest of any kind in, the above-identified real property of the Estate of Charles R. Boisso,
18 located in Pierce County, Washington.

19 3. After carefully considering the standards set forth in RCW 11.96A.150; the time
20 and billing entries, and the hourly rate of petitioner's counsel; and then determining the
21 reasonableness of petitioner's attorney fees request pursuant to the factors set forth in the lodestar
22 method under the totality of the circumstances, including the benefit conferred upon the Estate as
23 a result of the personal representative's defense against respondent's claims after respondent filed
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1 | suit on his rejected Creditor's Claim in an improper court, the Estate is awarded its reasonable
2 | attorney fees in the amount of \$29,650.00, plus statutory costs in the amount of \$92.00, for a
3 | total award of \$29,742.00.

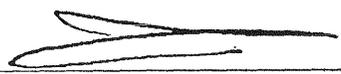
4 | 4. Post-judgment interest on said award of attorney fees and costs (\$29,742) shall
5 | accrue at the rate of 12% per annum as of the date of entry of this Judgment, until satisfied.

6 | DATED this 5th day of August, 2013.

7 | 
8 | The Honorable Frances P. Chmelewski

9 | Presented by:

10 | LATHROP, WINBAUER, HARREL,
11 | SLOTHOWER & DENISON, L.L.P.

12 | By: 

13 | Douglas W. Nicholson, WSBA #24854
14 | Attorney for Petitioner, Nathaniel Boisso,
15 | Personal Representative of the
16 | Estate of Charles Boisso

17 | Approved as to Form and Content;
18 | Notice of Presentation Waived:

19 | CAMPBELL, DILLE, BARNETT &
20 | SMITH, PLLC

21 | By:

22 | Stephen A. Burnham, WSBA #13270
23 | Attorney for Respondent, Kevin Porter

Appendix 8

FILED

13 JUL -3 AM 10:27

KITTITAS COUNTY
SUPERIOR COURT CLERK

The Honorable Frances Chmielewski
Department 1
Hearing Date: July 3, 2013
Time: 9:00 a.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITTITAS

KEVIN PORTER,

Plaintiff,

v.

NATHANIEL (NATE) BOISSO,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF CHARLES BOISSO,

Defendant.

NO. 13-2-00169-4

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT WITH PREJUDICE

(Clerk's Action Required)

THIS MATTER, having come on for hearing this date upon defendant's motion to dismiss this action, with prejudice, and the Court having reviewed the complaint, all documents submitted by the respective parties relating to this motion, and having heard argument of counsel and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

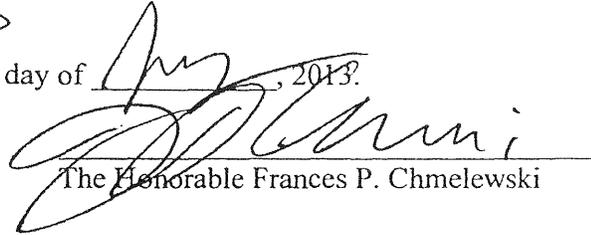
1. Because the claims asserted in plaintiff's complaint have all been adjudicated to be time-barred by this Court's Order of May 28, 2013, in Cause No. 12-4-00086-7, this cause, including plaintiff's complaint, is hereby **DISMISSED WITH PREJUDICE**.

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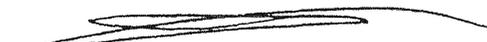
1 2. Defendant's request for fees under CR 11 has been withdrawn; therefore, it will
2 not be considered by the Court.

3 DONE IN OPEN COURT this 3RD day of Aug, 2013.

4
5 
The Honorable Frances P. Chmelewski

6 Presented by:

7 LATHROP, WINBAUER, HARREL,
8 SLOTHOWER & DENISON, L.L.P.

9 By: 

10 Douglas W. Nicholson, WSBA #24854
11 Attorney for Defendant, Nathaniel (Nate)
12 Boisso, Personal Representative of the
Estate of Charles Boisso

13 Approved as to Form and Content;
14 Notice of Presentation Waived:

15 CAMPBELL, DILLE, BARNETT &
16 SMITH, PLLC

17 By:

18 Stephen A. Burnham, WSBA #13270
19 Attorney for Plaintiff, Kevin Porter
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Appendix 9

FILED

13 AUG -5 AM 10:42 The Honorable Frances Chmielewski
Department 1
KITTITAS COUNTY Hearing Date: August 5, 2013
SUPERIOR COURT CLERK Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITTITAS

KEVIN PORTER,

Plaintiff,

v.

NATHANIEL (NATE) BOISSO,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF CHARLES BOISSO,

Defendant.

NO. 13-2-00169-4

13-9 00479-6

FINAL JUDGMENT IN FAVOR OF
DEFENDANT NATHANIEL (NATE)
BOISSO, PERSONAL
REPRESENTATIVE OF THE
ESTATE OF CHARLES BOISSO

(Clerk's Action Required)

FINAL JUDGMENT SUMMARY

Judgment Creditor:	Nathaniel Boisso, Personal Representative of the Estate of Charles Boisso
Judgment Creditor's Attorney:	Douglas W. Nicholson, of the law offices of Lathrop, Winbauer, Harrel, Slothower & Denison, LLP
Judgment Debtor:	Kevin Porter
Judgment Debtor's Attorney:	Steven A. Burnham, of the law offices of Campbell, Dille, Barnett & Smith, PLLC
Statutory Costs (RCW 4.84.080):	\$200.00
Total Judgment Amount:	\$200.00

Final Judgment in Favor of Defendant
Nathaniel (Nate) Boisso

Page 1 of 3

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (877) 962-8093
Tel (509) 925-6916

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1 Post-Judgment Interest: 12% per annum on the total judgment amount

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3 **JUDGMENT**

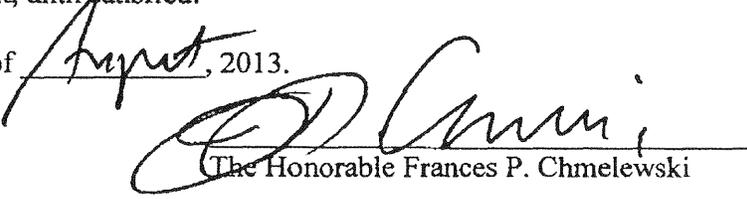
4 This matter was decided following oral argument heard on July 3, 2013, on defendant's
5 motion to dismiss plaintiff's complaint, with prejudice. The Honorable Frances P. Chmielewski
6 presided at the hearing on the motion. Plaintiff was represented at the hearing by legal counsel,
7 Steven A. Burnham; and defendant was represented at the hearing by legal counsel, Douglas W.
8 Nicholson. Following oral argument, the Court granted defendant's motion, and the same day
9 entered its Order Granting Defendant's Motion to Dismiss Plaintiff's Complaint with Prejudice,
10 which is incorporated by reference herein.

11
12 Accordingly, there being no further claims or issues remaining among the parties in this
13 action, and consistent with the Court's order filed July 3, 2013, it is hereby

14
15 ORDERED, ADJUDGED, AND DECREED that final judgment shall be entered in favor
16 of defendant, Nathaniel (Nate) Boisso, Personal Representative of the Estate of Charles Boisso,
17 as follows:

- 18 1. Plaintiff's complaint is dismissed, with prejudice;
- 19 2. Said defendant is awarded his statutory costs in the total amount of \$200, pursuant
20 to RCW 4.84.080; and
- 21 3. Post-judgment interest on said award shall accrue at the rate of 12% per annum as
22 of the date of entry of this Judgment, until satisfied.

23
24 DATED this 5th day of August, 2013.

25
26 
The Honorable Frances P. Chmielewski

